IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No.	: 09/888,899
Appellant(s)	: BRUNING, Gert
Filed	: 25 June 2001
Title	: METHOD AND SYSTEM FOR SELLING LIGHTING SOLUTIONS
TC/A.U.	: 3629
Examiner	: BORISSOV, Igor N.
Atty. Docket	: US 010297

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On: March 21, 2006
By: John C Fox

APPELLANT'S APPEAL BRIEF
CORRECTED

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
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Sir:

This corrected Brief of Appellant is in response to a Notification of Non-Compliant Appeal Brief dated 21 February 2006. The non-compliant Brief followed a Notice of Appeal, dated 13 October 2005, appealing the decision dated 18 July 2005, of the Examiner finally rejecting claims 1-13 of the application. All requisite fees set forth in 37 CFR 1.17(c) for this Brief are hereby authorized to be charged to Deposit Account No. 501,850.

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee of all rights in and to the subject application, Koninklijke Philips Electronics, N.V. of The Netherlands.

RELATED APPEALS AND INTERFERENCES

To the best of the knowledge of the undersigned, no other appeals or interferences are known to Appellants, Appellants' legal representatives, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Original claims 1-13 remain in the application in their original, unamended form, and now stand finally rejected as set forth in the final Office Action dated 18 July 2005, and are the subject of this appeal.

STATUS OF AMENDMENTS

No amendments were made in response to the Final Office action. All amendments have been entered.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention relates to lighting systems. More particularly, the invention relates to a method for selling lighting solutions that includes the installation and maintenance of lighting systems geared towards the unique needs of an individual consumer or business. In addition, the method includes charging a fee for the production of light and the servicing of the lighting system. (page 1, lines 6-10)

In a first aspect of the invention, a method for selling lighting solutions comprises: installing a lighting system for a customer; measuring lumens generated from the lighting system; and determining a customers light usage fee based on the lumens. (claim 1; page 2, lines 1-5; page 4, lines 16 and 17; page 6, lines 1-5; page 7, lines 1 and 2; FIG. 2 (210, 230, 280))

In one embodiment of the first aspect of the invention, the lighting system comprises at least one LED. (claim 2; page 2, lines 6 and 7; page 4, line 21)

In another embodiment of the first aspect of the method of the invention, the lumens are measured by at least one photodiode. (claim 3, page 2, lines 7 and 8; page 3, line 11)

In another embodiment of the first aspect of the invention, the method further comprises: installing an input device to allow customer control of the lighting system. (claim 4; page 2, lines 9 and 10; page 4, lines 16 and 17; FIG. 2 (210), FIG. 3 (310))

In a second aspect of the invention, a method for selling lighting solutions comprises: installing a lighting system for a customer; measuring changes of light spectrum

generated by the lighting system; and determining a customers light usage fee based on the changes of light spectrum. (claim 5; page 2, lines 11-13; page 4, lines 16 and 17; page 6, lines 5-7; page 7, lines 1 and 2; FIG. 3 (310, 330, 370))

In one embodiment of this second aspect of the invention, the lighting system comprises at least one LED. (claim 6; page 2, lines 6 and 7; page 4, line 21)

In another embodiment of this second aspect of the invention, the measuring of the changes of light spectrum generated by the lighting system comprises measuring the changes of light spectrum by a photodiode. (claim 7, page 2, lines 7 and 8; page 3, line 11)

In another embodiment of this second aspect of the invention, the method further comprises installing an input device to allow customer control of the lighting system. (claim 8; page 2, lines 9 and 10; page 4, lines 16 and 17; FIG. 3 (310))

In another embodiment of the first aspect of the invention, the method further comprises: measuring changes of light spectrum generated by the lighting system; determining a customers light usage fee based on the changes of light spectrum; and installing an input device to allow customer control of the lighting system. (claim 9; page 6, lines 5 and 6; page 2, lines 9, 10, 13 and 14; page 4, lines 16 and 17; FIG. 2 (210), FIG. 3 (310))

In a third aspect of the invention, a lighting solutions system comprises: means for measuring lumen output of a lighting system; and means for determining a fee based on the lumen output. (claim 10; page 3, lines 8 and 11-13; page 4, lines 4-6; page 7, lines 1 and 2; FIG. 1 (30), FIG. 2 (280), FIG. 3 (370))

In one embodiment of the third aspect of the invention, the lighting solutions system further comprises: means to allow customer control of the lighting system. (claim 11; page 2, lines 7-12; FIG. 1 (70))

In another embodiment of the third aspect of the invention, the lighting solutions system further comprises: means for measuring changes in spectrum of the lighting system; and means for determining a fee based on changes in spectrum. (claim 12; page 3, lines 8 and 11-13; page 6, lines 5-7; page 4, lines 4-6; page 7, lines 1 and 2; FIG. 1 (46, 30), FIG. 3 (330, 370))

In another embodiment of the third aspect of invention, the lighting solutions system further comprises: means for selecting a preprogrammed pattern of light to be emitted from the lighting system; means for measuring the use of the preprogrammed patterns of light; and means for determining a fee based on the use of the preprogrammed patterns of light. (claim 13; page 4, lines 7-12, 26 and 27; page 5, lines 24-26; page 7, lines 1 and 2; FIG. 1 (70, 30); FIG. 3 (325, 370))

GROUND(S) OF REJECTION TO BE REVIEWED ON APPEAL

The sole ground of rejection to be reviewed on appeal is:

Are claims 1-13 unpatentable under 35 USC 103(a) over Lys et al. (U.S. 6,211,626) (herein 'Lys') in view of Yablonowski et al. (U.S. 6,535,859) (herein 'Yablonowski')?

ARGUMENT

Claims 1-13 are finally rejected under 35 USC 103(a) as being unpatentable over Lys in view of Yablonowski.

Lys teaches a current control system for a lighting assembly, wherein each current controlled lighting unit is uniquely addressable and capable of receiving illumination color information on a computer lighting network. See col. 5, lines 45-51.

Lys discloses, with reference to Fig. 90B, a sensor module 2050, which may be, *inter alia*, a light meter for measuring the intensity of light reflected by the surface being illuminated. See col. 59, lines 8-12.

Lys claims a light module comprising, *inter alia*, a processor for controlling the amount of electrical current supplied to a plurality of light emitting diodes, in order to generate a color within the color spectrum. See claim 1.

However, as acknowledged by the Examiner, Lys does not teach or suggest that a customer's light usage fee could or should be based on lumens. Indeed, Lys mentions nothing with regard to customer usage fees of any kind.

Yablonowski teaches to measure power consumption of a facility before and after retrofitting a lighting system with a power saving device, and to charge a fee based on the power savings.

In contrast, Applicant's claim measuring lumens generated from the lighting system or changes of light spectrum generated by the lighting system, and determining a customer's light usage fee based on the lumens generated or the light spectrum changes, not the power savings.

The Examiner has contended that it would have been obvious to modify Lys to include determining a customer's usage fee based on power consumed, as disclosed by Yablonowski, because a business needs funds to operate.

However, Lys is not concerned with power savings, but only with current control of uniquely addressable lighting units in order to generate colors within the color spectrum. Moreover, Lys is not concerned with fees for the use of his system, or even the manner in which his system is marketed to an end user. Thus, there would be no motivation to modify Lys in view of Yablonowski in the manner suggested by the Examiner.

Moreover, the fact that businesses need funds to operate is irrelevant to a determination of obviousness in this case. In order for a combination of references to be effective under Section 103(a), there must be some teaching or suggestion contained within at least one of the references which would lead the skilled artisan to make the modification urged by the Examiner.

Neither Lys nor Yablonowski contain any teaching or suggestion that Lys' system could benefit from any of the power savings devices disclosed by Yablonowski. The mere fact that businesses need funds to operate is, while common knowledge, too general and vague to provide sufficient motivation.

Even if Yablonowski could be said to suggest that Lys should charge a customer for usage, this modification would not result in Applicant's claimed invention, since Yablonowski's usage fee is based on power savings, not on lumens generated or light spectrum changes, as claimed by Applicant.

Thus, even if Lys and Yablonowski were combined as suggested by the Examiner, the resulting combination would

actually lead the skilled artisan away from Applicant's claimed invention.

In response to Applicant's argument that Lys fails to disclose charging a customer a usage fee, the Examiner has stated that the term 'customer' indicates the buyer of a product or a service, thereby suggesting the 'charging' step.

However, Lys fails to disclose anything regarding a customer, a buyer of a product or service, or charging a customer.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner has stated that both Lys and Yablonowski teach method and system for installing a lighting system for a customer.

This is not true with regard to Lys. Lys is silent with regard to any aspect of installing a lighting system for a customer.

The Examiner has further stated that the motivation to combine the references to include charging a customer a fee for services rendered would be to generate funds for businesses to operate.

However, Applicant is not reciting a general step of charging a fee for services rendered. Applicant is charging a fee which is based on lumens generated or changes in the lighting spectrum generated. This particular method of charging for services rendered is unique and is at the crux of Applicant's invention. Both Lys and Yablonowski utterly fail to teach or suggest such a unique method of charging for services rendered.

In response to Applicant's argument that Lys fails to teach installing a lighting system for a customer, the Examiner has cited col. 7, lines 1-4 of the reference, wherein it is

stated that the manner of use of an LED unit includes placing it within an environment, and controlling the amount of current to the unit so as to generate a color within the color spectrum.

However, placing an LED unit in an environment is not the same as installing a lighting system for a customer. An 'environment' could simply mean a bench in a laboratory.

Moreover, even if the combination of Lys and Yablonowski could be said to suggest installing a system for a customer, neither reference teaches or suggests charging the customer based on lumens or spectrum changes generated. In fact, Yablonowski teaches charging the customer based on power savings, and thus actually teaches away from Applicant's invention.

Argument with respect to claim 5

Regarding claim 5, the Examiner has argued that Lys teaches installing a lighting system for a customer, citing col. 7, lines 1-4 of the reference. However, this passage does not state that a lighting system is installed for a customer, nor, as already stated, are customer installations mentioned elsewhere in the reference.

Argument with respect to claims 5 and 10

Next, with regard to both claim 5 and claim 10, the Examiner has argued that by controlling the current to lighting units in a lighting system to achieve a desired color, Lys has established a 'straight correlation' between energy consumed and changes in light spectrum, referring to col. 6, lines 60-66 of Lys, wherein it is stated that a processor is provided for controlling the amount of current supplied to the LED system, so that a particular amount of current supplied thereto generates a corresponding color within the color spectrum.

This argument assumes that controlling the current is the same as measuring the energy consumed.

However, controlling the amount of current supplied is not the same as measuring the amount of energy consumed. The current is supplied to individual lighting units within a lighting system which includes a computer network. The power requirements of the network, as well as the inefficiencies in the lighting units and the line resistances would all contribute significantly to the amount of energy consumed in running the system.

Lys does not indicate that any measurements are made to determine the amount of energy consumed. He only controls the current to achieve a desired color, and does not keep track of the total energy consumed.

In response to Applicant's argument that Lys does not teach any correlation between the amount of energy consumed and changes in the light spectrum, the Examiner has responded that the distinction between the current supplied to an LED and the energy consumed by the system is not made in the claims. However, Applicant's argument was made in response to the Examiner's argument with respect to claims 5 and 10 that Lys does teach a correlation between energy consumed and changes in the light spectrum.

In fact, claim 5 calls for a method comprising the steps of: (a) installing a lighting system for a customer; (b) measuring changes of light spectrum generated by the lighting system; and (c) determining a customer's light usage fee based on the changes of light spectrum. Lys and Yablonowski, whether taken individually or in combination, fail to either teach or suggest these steps.

Claim 10 calls for a lighting solutions system

comprising: means for measuring lumen output of a lighting system; and (b) means for determining a fee based on the lumen output. Lys and Yablonowski, whether taken individually or in combination, fail to either teach or suggest such a system.

In summary, since Lys is concerned with current control of uniquely addressable lighting units in a computer lighting network, in order to generate colors within the color spectrum, and is not concerned with fees for the use of his system, or even the manner in which his system is marketed to the end user, there would be no motivation to modify Lys in view of Yablonowski in the manner suggested by the Examiner.

Neither Lys nor Yablonowski contain any teaching or suggestion that Lys' system could benefit from any of the power savings devices disclosed by Yablonowski. The mere fact that businesses need funds to operate is, while common knowledge, too general and vague to provide sufficient motivation.

Even if Yablonowski could be said to suggest that Lys should charge a customer for usage, this modification would not result in Applicant's claimed invention, since Yablonowski's usage fee is based on power savings, not on lumens generated or light spectrum changes, as claimed by Applicant.

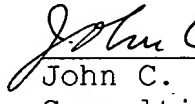
Thus, the combination of Lys and Yablonowski actually leads the skilled artisan away from Applicant's claimed invention.

Accordingly, claims 1-13 are patentable under 35 USC 103(a) over Lys in view of Yablonowski, and the rejection is in error and should be reversed.

CONCLUSION

In view of the foregoing, Appellant respectfully requests that the Board reverse the rejection of record, and direct the Examiner to allow all of the pending claims, and to otherwise find the application to be in condition for allowance.

Respectfully submitted,



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203-329-6584

APPENDIX

CLAIMS ON APPEAL

1. A method for selling lighting solutions comprising:
installing a lighting system for a customer;
measuring lumens generated from the lighting system; and
determining a customers light usage fee based on the lumens.

2. The method of claim 1 wherein the lighting system comprises at least one LED.

3. The method of claim 1 wherein the measuring of the lumens generated by the lighting system comprises measuring the lumens by at least one photodiode.

4. The method of claim 1 further comprising:
installing an input device to allow customer control of the lighting system.

5. A method for selling lighting solutions comprising:
installing a lighting system for a customer;
measuring changes of light spectrum generated by the lighting system; and
determining a customers light usage fee based on the changes of light spectrum.

6. The method of claim 5 wherein the lighting system comprises at least one LED.

7. The method of claim 5 wherein the measuring of the changes of light spectrum generated by the lighting system comprises measuring the changes of light spectrum by a photodiode.

8. The method of claim 5 further comprising:

installing an input device to allow customer control of the lighting system.

9. The method of claim 1 further comprising:

measuring changes of light spectrum generated by the lighting system;

determining a customers light usage fee based on the changes of light spectrum; and

installing an input device to allow customer control of the lighting system.

10. A lighting solutions system comprising:

means for measuring lumen output of a lighting system; and

means for determining a fee based on the lumen output.

11. The lighting solutions system of claim 10 further comprising:

means to allow customer control of the lighting system.

12. The lighting solutions system of claim 11 further comprising:

means for measuring changes in spectrum of the lighting system; and

means for determining a fee based on changes in spectrum.

13. The lighting solutions system of claim 12 further comprising:

means for selecting a preprogrammed pattern of light to be emitted from the lighting system;

means for measuring the use of the preprogrammed patterns of light; and

means for determining a fee based on the use of the preprogrammed patterns of light.

EVIDENCE APPENDIX

(none)

RELATED PROCEEDINGS APPENDIX

(none)